



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,400	11/21/2003	Charles Christopher Thorpe	3000177 / 703454-2001	2557

7590 11/27/2006

Bingham McCutchen LLP
Suite 1800
Three Embarcadero Center
San Francisco, CA 94111-4067

EXAMINER

VAN, QUANG T

ART UNIT	PAPER NUMBER
----------	--------------

3742

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,400

Applicant(s)

THORPE ET AL.

Examiner

Quang T. Van

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/26/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-22,24-26,29,31-58,61,62,75,76,79,80,83,84 and 87-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-22,24-26,29,31-58,61,62,75,76,79,80,83,84 and 87-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-2, 6, 7-13, 14-15, 18-19, 24-26, 29, 31-38, 39-41, 45-47, 50, 53, 55-58, 61-62, 79-80, 83-84, 87-88, 89-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action. Levinson discloses, figure 7, a microwave cooking in a chamber kit comprising a microwaveable housing having a top housing section (12) and an bottom housing section (12); each housing section (12,14) defining an interior space (40, 41), the top housing section (12) being placed on top of the bottom housing section (14) to close the microwaveable housing; and a grill (46) positioned within said bottom housing section (14) and suspended above a bottom interior surface (44) of said lower housing section (14) said grill (46) defining a plurality of apertures (col. 11, lines 24-27) and having a surface that includes a metalized susceptor material (col.5, lines 6-10) for grilling the food item, wherein said bottom interior surface (44) which is a portion of said lower housing section (14) and said grill (46) are structurally configured so that steam generated by heating positioned on said bottom interior surface (44) of said lower housing section (14) below said grill (46) passes upwardly from said interior space (41) of said lower housing section (14), through said grill apertures, onto at least a bottom surface of the food item, and into said interior space (40) of said upper housing section

(col. 11, lines 23-44). However, Levinson does not disclose a gelatinous ingredient for said food item positioned in the lower housing section, wherein said gelatinous ingredient is not extracted from the food item. Wang discloses a gelatinous ingredient (21) for said food item positioned in the lower housing section (14), wherein said gelatinous ingredient is not extracted from the food item (col. 11, lines 32-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson a gelatinous ingredient for said food item, wherein said gelatinous ingredient is not extracted from the food item as taught by Wang in order to add flavor to the cooking item when cooking. With regard to claims 6-14, 31-38, a solid, semi-solid gelatinous ingredient or flavoring material is considered material or article worked upon by apparatus. "Expressions relating the apparatus to contents thereof during an intended operation are no significance in determining patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

Furthermore, "Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims". *In re. Young*, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, a solid, semi-solid gelatinous ingredient or flavoring material is considered material or article worked upon which does not limit apparatus claims, therefore no patent weight is given to these claims.

3. Claims 3, 20-22, 42-44, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Koochaki (US 6,229,131).

Levinson/Wang disclose substantially all features of the claimed invention except a housing including a vent. Koochaki discloses a microwave-cooking grill (100) having a housing including a vent (186). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a housing including a vent as taught by Koochaki in order to release the steam from the cooking housing.

4. Claims 16-17, 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Barnes (US 6,608,292). Levinson/Wang disclose substantially all features of the claimed invention except a connector that couples said lower and upper microwave housing sections. Barnes discloses a connector (212) that couples said lower (104) and upper microwave housing sections (102). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a connector that couples said lower and upper microwave housing sections as taught by Barnes in order to connect the upper and the lower housing section together.

5. Claims 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Craft (US 6,018,157). Levinson/Wang discloses substantially all features of the claimed invention except an inert gas being added into said microwaveable housing. Craft discloses an inert gas being added into said microwaveable housing (col. 4, lines 10-18). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang an inert gas being added into said microwaveable housing as taught by Craft in order to repeated cooking cycles without requiring replacement and without significant degradation of the microwave grill.

6. Claims 75-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Thompson (US 3,669,688). Levinson/Wang disclose substantially all features of the claimed invention except the gelatinous ingredient including a corn syrup ingredient and an agar ingredient. Thompson discloses gelatinous ingredient including a corn syrup ingredient and an agar ingredient (col. 1, lines 58-72 and col. 2, lines 1-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang gelatinous ingredient including a corn syrup ingredient and an agar ingredient as taught by Thompson in order to add flavor to the cooking item.

Response to Amendment

7. Applicant's arguments filed 9/26/2006 have been fully considered but they are not persuasive.

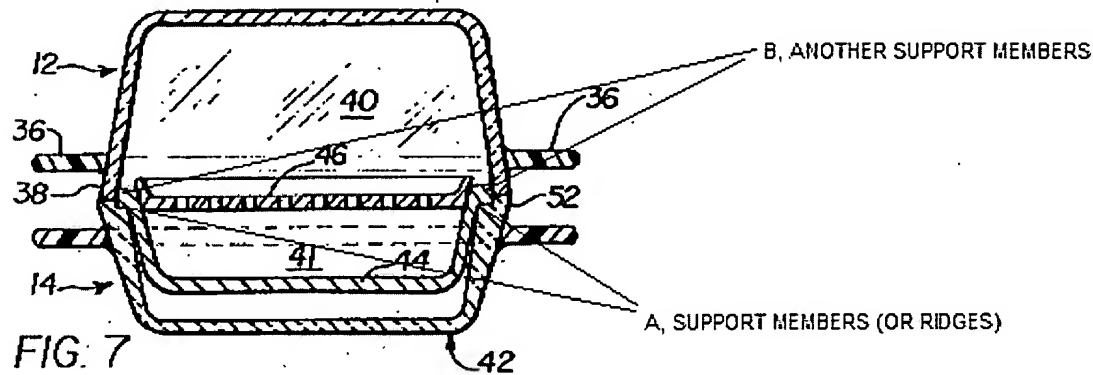
Applicants argue the metal pot 44 cannot be a "top" or "bottom" housing section since it is an intermediate component between bowl 12 and pot 42, recited in REMARKS, page 13, lines 6-7. The Examiner disagrees. The metal pot 44 is a portion of the bottom housing section (14, col. 4, lines 51-54); thus, it is considered a part of the bottom housing section.

Applicants also argue that reference Levinson “does not disclose or suggest “ a grill positioned within said bottom housing section” as recited in claim 1 and related limitations of claims 15, 39 and 53”, recited in REMARKS, page 13, lines 14-15. Levinson discloses perforated pan 46 is a portion of the bottom housing section (14, col. 4, lines 51-54) and the perforated pan 46 placed inside the metal pot 44 (as admitted by applicant in REMARKS, page 13, lines 16-17). Therefore, Levinson’s reference still read on the claimed limitations.

Applicants further argue that Levinson does not disclose or suggest “said bottom housing section and said grill are structurally configured so that steam...passes upwardly from said interior space of said bottom housing section, through said grill aperture, onto at least a bottom surface of the food item and into said interior space of said top housing”, recited in REMARKS, page 13, lines 18-21. The Examiner disagrees. Levinson discloses a bottom interior surface (44) which is a portion of said lower housing section (14) and said grill (46) are structurally configured so that steam generated by heating positioned on said bottom interior surface (44) of said lower housing section (14) below said grill (46) passes upwardly from said interior space (41) of said lower housing section (14), through said grill apertures, onto at least a bottom surface of the food item, and into said interior space (40) of said upper housing section (col. 11, lines 23-44). Levinson still read on the claimed limitations.

In response to applicants’ argument on claims 15, 18, 39 and 40, Levinson discloses a support member (A) extending from an interior surface of said bottom housing section (14), and a grill (46) positioned within said bottom housing section (14)

and suspended by said support member (A). In response to claims 2, 19 and 41, figure below is shown that Levinson disclosed a plurality of support members (A and B).



In response to claims 14, 29, 45, 47 and 99, Wang's reference is read on limitations of these claims. Koochaki is disclosed the limitations of claims 42-44. In response applicants' argument to claims 89-92 that Levinson fails to disclose "disposable" limitations. The Examiner is disagrees. "Disposable" limitations are intended use because everything is disposable and up to the user decides to keep or dispose after the first used. Therefore, Levinson is inherent disclosed that.

In response to claims 39-53, 61, 75, 79, 83, 87, 91, 95, 97 and 99 are directed to a "packaged food product" and considered material or article worked upon by apparatus. "Expressions relating the apparatus to contents thereof during an intended operation are no significance in determining patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims". *In re Young*, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, a packaged food product is

considered material or article worked upon which does not limit apparatus claims, therefore no patent weight is given to these claims.

8. Applicants argue claims 2, 6-14, 18, 19, 24-26, 29, 31-38, 40-42, 45-47, 50, 55-58, 61, 62, 79, 80, 83, 84, 87, 88, and 89-98 that the combination would nevertheless fail to disclose each and every limitation of the claims, and the rejection under 35 U.S.C. 103(a) cannot stand. In response to applicant's argument that there is no suggestion or motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Levinson discloses substantially all features of the claimed invention as mention above rejection except a gelatinous ingredient for said food item positioned in the lower housing section, wherein said gelatinous ingredient is not extracted from the food item. Wang discloses a gelatinous ingredient (21) for said food item positioned in the lower housing section (14), wherein said gelatinous ingredient is not extracted from the food item (col. 11, lines 32-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson a gelatinous ingredient for said food item, wherein said gelatinous ingredient is not extracted from the food item as taught by Wang in order to add flavor to the cooking item when cooking; and with regard to claims 3, 20-22, 43, 44 and 54, in this case, Levinson/Wang disclose

Art Unit: 3742

substantially all features of the claimed invention except a housing including a vent.

Koochaki discloses a microwave-cooking grill (100) having a housing including a vent (186). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a housing including a vent as taught by Koochaki in order to release the steam from the cooking housing; and with regard to claims 16, 17, 51, 52, in this case, Levinson/Wang disclose substantially all features of the claimed invention except a connector that couples said lower and upper microwave housing sections. Barnes discloses a connector (212) that couples said lower (104) and upper microwave housing sections (102). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a connector that couples said lower and upper microwave housing sections as taught by Barnes in order to connect the upper and the lower housing section together; and with regard to claims 48 and 49, in this case, Levinson/Wang discloses substantially all features of the claimed invention except an inert gas being added into said microwaveable housing. Craft discloses an inert gas being added into said microwaveable housing (col. 4, lines 10-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang an inert gas being added into said microwaveable housing as taught by Craft in order to repeated cooking cycles without requiring replacement and without significant degradation of the microwave grill; and with regard to claims 75-76, in this case, Levinson/Wang disclose substantially all features of the claimed invention except the gelatinous ingredient including a corn syrup ingredient and an agar ingredient.

Thompson discloses gelatinous ingredient including a corn syrup ingredient and an agar ingredient (col. 1, lines 58-72 and col. 2, lines 1-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang gelatinous ingredient including a corn syrup ingredient and an agar ingredient as taught by Thompson in order to add flavor to the cooking item.

Further, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T. Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 3742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QV

QV

November 14, 2006



Quang T Van
Primary Examiner
Art Unit 3742